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In Re:

Case No. 04-43967

Robert James Vogelpohl and Patricia Ann Vogelpohl  
Debtor(s)

Chapter 7 Case

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**NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY**

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TO: Debtor(s) and other entities specified in Local Rule 9013-3.

1. Ford Motor Credit Company moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on October 14, 2004 at 2:00 PM o'clock, in Courtroom No. 8 West, at the United States Courthouse, 300 South Fourth St, Minneapolis, MN.
3. Any response to this motion must be filed and delivered not later than October 8, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 4, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed July 16, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay in §362(a) to foreclose its lien against the 2002 FORD FOCUS 4D SE vehicle (the collateral), and requests the court permit Movant to immediately enforce the order requested, lifting the 10 day stay imposed by Rule 4001(a)(3).

6. Movant requests relief from the stay for cause under §362(d)(1). Debtor is delinquent under the terms of the original contract with Movant. Movant requests relief under §362(d)(2). The Debtor has no equity in the collateral, and the collateral is not necessary to an effective reorganization.
7. Movant gives notice that it may, if necessary, call Chester Marzec, or some other representative of Movant, from Movant's offices in Minnesota, to testify regarding the debt and collateral value.
8. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the collateral promptly upon the Court signing the Order.
9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

**WHEREFORE**, Ford Motor Credit Company moves the Court for an order modifying the automatic stay of §362(a) of the Bankruptcy Code to permit Movant to take possession and dispose of the collateral, and such other relief as may be just and equitable.

Dated: September 23, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

MINNESOTA DEPARTMENT OF PUBLIC  
DRIVER & VEHICLE SERVICES DIVISIC  
445 MINNESOTA ST., ST. PAUL, MN 551  
CONFIRMATION OF LIEN PERFECTION - DEI

VOGELPOHL ROBERT JAMES  
VOGELPOHL PATRICIA ANN  
5416 TOLEDO AVE N  
CRYSTAL MN 55429

St. Paul, MN

\*

HGF406

1ST SECURED PARTY

**LIEN HOLDER**

Year 02	Make FORD	Model 4DEF	Title NR. H3550N962
VIN 1FAFP34352W106641		Security Date 10/17/01	Rebuilt NO

RETAIN THIS DOCUMENT - See reverse  
side of this form for removing this lien.

FORD MOTOR CREDIT CO C/O ASG  
PO BOX 105704  
ATLANTA GA 30348-5704

EXHIBIT A

# MINNESOTA SIMPLE INTEREST VEHICLE RETAIL INSTALLMENT CONTRACT

DATE 10/17/2001

Buyer (and Co-Buyer) Name and Address (Including County and Zip Code) ROBERT JAMES VOGELPOHL 5416 TOLEDO AVENUE CRYSTAL HENN MN 55429 PATRICIA ANN VOGELPOHL 5416 TOLEDO AVENUE CRYSTAL HENN MN 55429	CREDITOR (Seller Name and Address) BROOKDALE FORD INC. 2500 COUNTY ROAD 10 BROOKLYN CENTER MN 55430
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You, the Buyer (and Co-Buyer, if any), may buy the vehicle described below for cash or on credit. The cash price is shown below as "Cash Price." The credit price is shown below as "Total Sale Price." By signing this contract, you choose to buy the vehicle on credit under the agreements on the front and back of this contract.

New/Used	Year and Make	Model	GVW If Truck (lbs.)	Vehicle Identification Number	Use For Which Purchased
NEW	2002 FORD	FOCUS		1FAFP34352W106641	<input checked="" type="checkbox"/> Personal <input type="checkbox"/> Agricultural <input type="checkbox"/> Commercial

Trade-in	1999 CHEV	\$ 6400.00	\$ 9864.00
	Year and Make	Gross Allowance	Amount Owing

## ITEMIZATION OF AMOUNT FINANCED

1. Cash Price	\$16970.00	(1)
2. Down Payment		
Manufacturer's Rebate Assigned to Creditor	\$ N/A	
Cash Down Payment	\$ N/A	
Trade-in (description above)	\$ 3464.00	
Total Down Payment	\$ 0.00	(2)
3. Unpaid Balance of Cash Price (1 minus 2)	\$16970.00	(3)
4. Amounts Paid On Your Behalf (Seller may be retaining a portion of these amounts)		
To Public Officials		
(i) for license, title & registration fees \$ 204.50		
(ii) for filing fees \$ 7.00		
(iii) for taxes (not in Cash Price)	\$ 664.30	\$ 875.80
To Insurance Companies for:		
Credit Life Insurance	\$ N/A	
Credit Disability Insurance	\$ N/A	
To BROOKDALE FORD INC. for DOC FEE	\$ 25.00	
To GMAC for NET TRADE-IN PAYOFF	\$ 3464.00	
To GAP Wise for GAP	\$ 4364.80	(4)
Total	\$ 1334.80	(5)
5. Amount Financed (3 plus 4)	\$ 1334.80	

## INSURANCE

YOU MAY OBTAIN VEHICLE INSURANCE FROM A PERSON OF YOUR CHOICE.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE, CREDIT DISABILITY AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.

<input type="checkbox"/> Credit Life	Insurer
\$ N/A	Premium
	Insured(s)
	Signature(s)

<input type="checkbox"/> Credit Disability	Insurer
\$ N/A	Premium
	Insured
	Signature

<input type="checkbox"/> Type of Insurance	Term
	\$ N/A
	Premium
	Signature

Credit Life and Credit Disability Insurance are for the term of the contract. The amount and coverages are shown in a notice or agreement given to you today.

You are required to insure the vehicle. If a charge is shown below, the Creditor will try to buy the coverages checked for the term shown. Coverages will be based on the cash value of the vehicle at the time of loss, but not more than the limits of the policy.

<input type="checkbox"/> Comprehensive	<input type="checkbox"/> \$ N/A	Deductible
<input type="checkbox"/> Fire-Theft-Combined Additional Coverage		Collision
<input type="checkbox"/> Towing and Labor		
<input type="checkbox"/> Term	\$ N/A	Months (Estimate)
	Premium \$	N/A

## FEDERAL TRUTH-IN-LENDING DISCLOSURES

ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid when you have made all scheduled payments	The total cost of your purchase on credit, including your downpayment
4.90 %	\$ 2812.20	\$ 21334.80	\$ 24147.00	\$ 24147.00

XX	
Payment Schedule —	<input type="checkbox"/> Number of payments
Your payment schedule will be:	59
	1 final
	Amount of Each payment
	\$ 402.45
	\$ 402.45
	When Payments are due
	12/01/2001

Prepayment: If you pay off your debt early, you will not have to pay a penalty.

Security Interest: You are giving a security interest in the vehicle being purchased.

Contract: Please see this contract for additional information on security interest, nonpayment, default, the right to require repayment of your debt in full before the scheduled date, and prepayment penalty.

COMMERCIAL OR AGRICULTURAL USE CONTRACTS: If you purchased the vehicle for commercial or agricultural use, you must pay a late charge on the portion of each payment received more than 10 days late of 7.5 percent of the late amount or \$50.00, whichever is less.

Any change in this contract must be in writing and signed by you and the Creditor.

BUYER: *X Robert J Vogelpohl* CO-BUYER: *O Patricia A Vogelpohl*

## NOTICE TO BUYER

Do not sign this contract before you read it or if it contains any blank spaces. You are entitled to an exact copy of the contract you sign.

You acknowledge receipt of a true and completely filled in copy of this contract, signed by both yourself and the seller, at the time of signing.

IMPORTANT: THIS MAY BE A BINDING CONTRACT AND YOU MAY LOSE ANY DEPOSITS IF YOU DO NOT PERFORM ACCORDING TO ITS TERMS.

*X Robert J Vogelpohl* Buyer Signs *O Patricia A Vogelpohl* (Co) Buyer Signs

By signing below, the Seller accepts this contract. If no other Assignee is named in a separate assignment attached to this contract, the Seller assigns it to Ford Motor Credit Company.

BROOKDALE FORD INC.

Seller *[Signature]* *[Signature]*

## QUESTIONS?



PLEASE CALL US AT 1-800-727-7000 00-001

ORIGINAL

EXHIBIT B

**A. Payments:** You must make all payments when they are due. You may prepay your debt at any time without penalty. This is a simple interest contract. The actual finance charge you agree to pay will depend on your payment patterns. The actual finance charge may exceed the disclosed Finance Charge if you make your payments later than the scheduled dates or in less than the scheduled amount. Your payment will be applied first to the earned and unpaid part of the Finance Charge and then to the unpaid Amount Financed. The Finance Charge is earned by applying the Annual Percentage Rate to the unpaid Amount Financed for the actual time that the unpaid Amount Financed is outstanding.

**B. Security Interest:** You give the Creditor a security interest in:

1. The vehicle and all parts or other goods put on the vehicle;
2. All money or goods received for the vehicle; and
3. All insurance premiums and service contracts financed for you.

This secures payment of all amounts you owe under this contract. It also secures your other agreements in this contract.

**C. Use of Vehicle - Warranties:** You must take care of the vehicle and obey all laws in using it. You may not sell or rent the vehicle, and you must keep it free from the claims of others. You will not use or permit the use of the vehicle outside of the United States, except for up to 30 days in Canada or Mexico, without the prior written consent of the Creditor. If the vehicle is of a type normally used for personal use and the Creditor, or the vehicle's manufacturer, extends a written warranty or service contract covering the vehicle within 90 days from the date of this contract, you get implied warranties of merchantability and fitness for a particular purpose covering the vehicle. Otherwise, you understand and agree that there are no such implied warranties.

**D. Insurance:** You must insure yourself and the Creditor against loss or damage to the vehicle. The type and amount of insurance must be approved by the Creditor. If the Creditor obtains a refund on insurance or service contracts, the Creditor will subtract the refund from what you owe. Whether or not the vehicle is insured, you must pay for it if it is lost, damaged, or destroyed.

If a charge for vehicle insurance is shown on the front, the Creditor will try to buy the coverages checked for the term shown. The Creditor is not liable, though, if he cannot do so. If these coverages cost more than the amount shown for insurance, the Creditor may buy them for a shorter term or he may give you credit for the amount shown. If he cannot buy any insurance, he will give you credit for the amount shown. The credit will be made to the last payments due.

**E. Late Payments:** You must pay any cost paid by the Creditor to collect any late payment, as allowed by law. Acceptance of a late payment does not excuse your default or mean that you can keep making payments after they are due. The Creditor may take the steps set forth below if there is any default.

**F. Default:** You will be in default if:

1. You do not make a payment when it is due;
2. You gave false or misleading information on your credit application relating to this contract; or
3. Your vehicle is seized by any local, state, or federal authority and is not promptly and unconditionally returned to you; or
4. You file a bankruptcy petition or one is filed against you; or
5. You do not keep any other promise in this contract.

If you default, the Creditor may require you to pay at once the unpaid Amount Financed, the earned and unpaid part of the Finance Charge, and all other amounts due under this contract. He may repossess (take back) the vehicle, too. He may also take goods found in the vehicle when repossessed and hold them for you.

If the vehicle is taken back, he will send you a notice. The notice will say that you may redeem (buy back) the vehicle. It will also show the amount needed to redeem. You may redeem the vehicle up to the time the Creditor sells it or agrees to sell it. If you do not redeem the vehicle, it will be sold.

The money from the sale, less allowed expenses, will be used to pay the amount still owed on this contract. Allowed expenses include those paid as a direct result of having to retake the vehicle, hold it, prepare it for sale, and sell it. You must also pay attorney fees not to exceed 15% of the amount due and payable under the contract, and court costs payable by Ford Credit to obtain, hold, and sell the vehicle, collect amounts due and enforce Holder's rights under the contract. If there is any money left (a surplus), it will be paid to you. If the money from the sale is not enough to pay off this contract and costs, you will pay what is still owed to the Creditor, if allowed by law. If you do not pay this amount when the Creditor asks, the Creditor may charge you interest at the highest lawful rate until you pay.

**G. General:** To contact Ford Motor Credit Company about this account, call 1-(800) 727-7000. Any change in this contract must be in writing and signed by you and the Creditor. The law of Minnesota applies to this contract. If that law does not allow all the agreements in this contract, the ones that are not allowed will be void. The rest of this contract will still be good.

#### FIC NOTICES

**NOTICE — ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREUNDER.**

**Used Motor Vehicle Buyers Guide.** If you are buying a used vehicle with this contract, federal regulations may require a special Buyers Guide to be displayed on the window of the vehicle. **THE INFORMATION YOU SEE ON THE WINDOW FORM FOR THIS VEHICLE IS PART OF THIS CONTRACT. INFORMATION ON THE WINDOW FORM OVERRIDES ANY CONTRARY PROVISIONS IN THE CONTRACT OF SALE.**

\*Does not apply if purchased for commercial or agricultural use. In that case, you (debtor) will not assert against any assignee or subsequent holder of this Contract any claims, defenses, or setoffs which you may have against the Seller or manufacturer of the vehicle.

#### GUARANTY

To cause the Seller to sell the vehicle described on the front of this contract to the Buyer, on credit, each person who signs below as a "Guarantor" guarantees the payment of this contract. This means that if the Buyer fails to pay any money that is owed on this contract, each one who signs as a guarantor will pay it when asked. Each person who signs below agrees that he will be liable for the whole amount owed even if one or more other persons also signs this Guaranty. He also agrees to be liable even if the Creditor does one or more of the following: (a) gives the Buyer more time to pay one or more payments, or (b) gives a release in full or in part to any of the other Guarantors, or (c) releases any security. Each Guarantor also states that he has received a completed copy of this contract and this Guaranty at the time of signing.

Guarantor \_\_\_\_\_ Address \_\_\_\_\_  
Guarantor \_\_\_\_\_ Address \_\_\_\_\_



Trade-In	BODY TYPE	Model No.	M.S.R.P.	Weight	Loan	Retail
400	Add Handling Package (Std. LX Sport)				400	450
350	Add Aluminum/Alloy Wheels (Std. LX Sport)				350	400
175	Add Compact Disc Player (Std. LX Sport)				175	200
500	Add Leather Seats (Std. LX Sport)				500	575
100	Add Theft Recovery System				100	125
225	Deduct W/out Cruise Control				225	225
225	Deduct W/out Power Seat				225	225
<b>2003 THUNDERBIRD-V8</b>						
Veh. Ident.: 1FAHP60A( )3W100001 Up.						
25200	Convertible 2D	60	\$36340	3775	22700	29000
800	Add Removable Hardtop				800	900
100	Add Theft Recovery System				100	125
<b>FORD</b>						
<b>2002 FOCUS-4 Cyl.</b>						
Veh. Ident.: ( )FA( )P(Model)( )2( )100001 Up.						
6500	Hatchback 3D ZX3	31	\$12415	2598	5850	8075
9900	Hatchback 3D SVT (6 Spd.)	39	17505	2770	8925	11975
7750	Hatchback 5D ZX5	37	15615	2699	6975	9475
5650	Sedan 4D LX	33	12730	2604	5100	7175
6700	Sedan 4D SE	34	14320	2564	6050	8300
7525	Sedan 4D ZTS	38	15240	2551	6775	9225
7600	Wagon 4D SE	36	16525	2717	6850	9300
8700	Wagon 4D ZTW	36	17705	2717	7850	10550
200	Add Aluminum/Alloy Wheels (LX)				200	225
225	Add Audiophile Stereo System				225	250
100	Add Compact Disc Player (LX)				100	125
150	Add Cruise Control (ZX3, LX, SE)				150	175
275	Add Leather Seats (Std. SVT, ZTW)				275	325
100	Add Power Door Locks (ZX3, LX)				100	125
450	Add Power Sunroof				450	500
150	Add Power Windows (ZX3, LX)				150	175
75	Add Theft Recovery System				75	100
100	Add Tilt Steering Wheel (ZX3, LX, SE)				100	125
500	Deduct W/out Air Conditioning				500	500
425	Deduct W/out Automatic Trans. (Ex. SVT)				425	425
<b>2002 ESCORT-4 Cyl.</b>						
Veh. Ident.: ( )FA( )P(Model)( )2( )100001 Up.						
5500	Coupe 2D ZX2	11	\$12340	2464	4950	7000
4950	Sedan 4D	13	13960	2510	4475	6400
200	Add Aluminum/Alloy Wheels (Std. ZX2)				200	225
100	Add Compact Disc Player				100	125
150	Add Cruise Control				150	175
275	Add Leather Seats				275	325
100	Add Power Door Locks				100	125
450	Add Power Sunroof				450	500
150	Add Power Windows				150	175
75	Add Theft Recovery System				75	100
100	Add Tilt Steering Wheel				100	125
500	Deduct W/out Air Conditioning				500	500
425	Deduct W/out Automatic Trans.				425	425
<b>2002 MUSTANG-V6</b>						
Veh. Ident.: ( )FA( )P(Model)( )2( )100001 Up.						
9425	Coupe 2D	40	\$17190	3114	8500	11450

ADJUST FOR MILEAGE - ADJUST FOR CONDITION  
MIDWEST EDITION - JULY 2004

Trade-In	BODY TYPE	Model No.	M.S.R.P.	Weight	Loan	Retail
12075	Convertible 2D	44	22510	3254	10875	14400
<b>2002 MUSTANG-V8-5 Spd./AT</b>						
Veh. Ident.: ( )FA( )P(Model)( )2( )100001 Up.						
13000	Coupe 2D GT	42	\$22730	3273	12250	16025
16075	Convertible 2D GT	45	26985	3429	14475	18625
<b>MUSTANG OPTIONS</b>						
400	Add Leather Seats				400	450
250	Add MACH Stereo System				250	300
175	Add Power Seat (Coupe V6)				175	200
75	Add Theft Recovery System				75	100
525	Deduct W/out Automatic Trans. (V6)				525	525
175	Deduct W/out Cruise Control				175	175
<b>2002 TAURUS-V6</b>						
Veh. Ident.: ( )FA( )P(Model)( )2( )100001 Up.						
6975	Sedan 4D LX	52	\$18635	3355	6300	8750
7525	Sedan 4D SE	53	19445	3355	6775	9350
8150	Sedan 4D SES	55	20460	3392	7350	10025
9225	Sedan 4D SEL	56	22330	3408	8325	11250
8775	Wagon 4D SE	58	21380	3519	7900	10700
10125	Wagon 4D SEL	59	22580	3532	9125	12250
350	Add 3.0L Duratec V6 Engine (Std. Sedan SEL)				350	400
250	Add Aluminum/Alloy Wheels (LX)				250	300
125	Add Compact Disc Player (Std. SES, SEL)				125	150
400	Add Leather Seats				400	450
250	Add MACH Stereo System				250	300
175	Add Power Seat (Std. SES, SEL)				175	200
550	Add Power Sunroof				550	625
75	Add Theft Recovery System				75	100
175	Deduct W/out Cruise Control				175	175
225	Deduct W/out Third Seat (Wagon)				225	225
<b>2002 CROWN VICTORIA-V8</b>						
Veh. Ident.: ( )FA( )P(Model)( )2( )100001 Up.						
10425	Sedan 4D S	72	\$23015		9400	12650
10675	Sedan 4D	73	22755	3917	9625	12925
12100	Sedan 4D LX	74	26345	3927	10900	14475
13350	Sedan 4D LX Sport	74	27960	3927	12025	15800
11350	Sedan 4D S Extended	70	25140		10225	13650
300	Add Aluminum/Alloy Wheels (Std. LX Sport)				300	350
150	Add Compact Disc Player				150	175
450	Add Leather Seats (Std. LX Sport)				450	500
75	Add Theft Recovery System				75	100
200	Deduct W/out Cruise Control				200	200
200	Deduct W/out Power Seat				200	200
<b>2002 THUNDERBIRD-V8</b>						
Veh. Ident.: ( )FA( )P60( )2( )100001 Up.						
23000	Convertible 2D	60	\$34965	3775	20700	26675
700	Add Removable Hardtop				700	800
75	Add Theft Recovery System				75	100

FORD

2001 FOCUS-4 Cyl.

Veh. Ident.: 1FA( )P(Model)( )1( )100001 Up.

5525 Hatchback 3D ZX3 31 \$12125 2551 4975 7025

ADJUST FOR MILEAGE - ADJUST FOR CONDITION  
MIDWEST EDITION - JULY 2004

EXHIBIT C

04-03096-0

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

In Re:  
Robert James Vogelpohl and Patricia Ann Vogelpohl  
Debtor(s)


Case No. 04-43967  
Chapter 7 Case

VERIFICATION FOR MOTION FOR RELIEF FROM STAY

I, Chester Marzec, the Designated Agent for Ford Motor Credit Company, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account number(s) 29208529.
2. The Debtor owes the Creditor \$10,729.90, payoff amount as of September 20, 2004, plus accrued unpaid interest thereon since that date. The monthly loan payment is \$402.45. As of September 20, 2004, the loan payments are in arrears \$804.90 for payments owing since August 1, 2004.
3. The debt owed to the Creditor is secured by a perfected lien on a 2002 FORD FOCUS 4D SE vehicle. The current value of the collateral is believed to be \$8,300.00.
4. Debtors' attorney has advised the Debtors' intent is to surrender the collateral although no such intent is stated on the filed Statement of Intentions.
5. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the loan documents are attached as Exhibit "B".

Dated: 9-21-04

  
Chester Marzec  
Ford Motor Credit Company  
National Bankruptcy Svc Center  
PO Box 537950  
Livonia, MI 48153-7950

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-43967

Robert James Vogelpohl and Patricia Ann Vogelpohl  
Debtor(s)

Chapter 7 Case

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**MEMORANDUM OF FACT AND LAW**

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Ford Motor Credit Company ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

**FACTS**

Movant is the holder of a secured claim, and is thus a party in interest. Movant has a valid and perfected security interest in the collateral. The collateral is in the possession of the Debtor.

The total net balance due on the Contract is \$10,729.90 as of September 20, 2004. On information and belief, the collateral has a current NADA retail value of \$8,300.00. A copy of the NADA page(s) showing the value of the collateral is attached as Exhibit "C".

Debtor's attorney advises that Debtor has decided to surrender the vehicle; Debtor has failed to do so. Movant's collateral is subject to depreciation in that the collateral is being used, subjecting the same to wear and tear, while Debtor is failing to make payments.

**ARGUMENT**

Pursuant to 11 U.S.C. §362(d)(1), a creditor is entitled to relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such creditor." In this case, there is a lack of adequate protection as follows:

- Failure to make the payments required by the Contract since August 1, 2004.
- Failure to make payments due post petition under the Contract.
- Failure to reaffirm, redeem or surrender the collateral.

Movant has not been provided with adequate protection of Movant's interest in the collateral.



Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay.

See, United States Association of Texas v. Timbers of Inwood Association, Ltd. (In re Timbers of Inwood Association, Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988); In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991). Pursuant to 11 U.S.C. §362(g), the burden is on the Debtor to prove adequate protection and/or absence of cause.

Pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate if the Debtor has no equity in the property and the property is not necessary to an effective reorganization. See, In re Gellert, 55 B.R. 970 (Bkrtcy. D.N.H. 1983). In the present case, the balance due Movant on the Contract is \$10,729.90. It appears Debtor has no equity in the collateral. No evidentiary hearing is required on the issue of equity unless Debtors dispute it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97 (N.D.N.Y. 1997). There is no reorganization proposed by the Debtor in this Chapter 7 case. Pursuant to 11 U.S.C. §362(g), the burden is on Debtor to establish that collateral is necessary for reorganization.

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion, order is not applicable so that Movant may immediately enforce and implement the order granting relief. Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: September 23, 2004

**STEWART, ZLIMEN & JUNGERS, LTD.**

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-43967

Robert James Vogelpohl and Patricia Ann Vogelpohl  
Debtor(s)

Chapter 7 Case

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**UNSWORN CERTIFICATE OF SERVICE**

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I, Linda Jeanne Jungers, declare under penalty of perjury that on September 24, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Robert James Vogelpohl  
10010 96th Place N  
Maple Grove, MN 55369

Patricia Ann Vogelpohl  
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Maple Grove, MN 55369

Craig W Andresen  
Attorney at Law  
2001 Killebrew Drive, Room 330  
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Brian F. Leonard  
Chapter 7 Trustee  
100 S 5th St #1200  
Minneapolis, MN 55402

U.S. Trustee  
1015 U.S. Courthouse  
300 South 4th Street  
Minneapolis, MN 55415

Executed on: September 24, 2004

Signed: /e/Linda Jeanne Jungers  
Linda Jeanne Jungers  
STEWART, ZLIMEN & JUNGERS  
430 Oak Grove Street, #200  
Minneapolis, MN 55403

04-03096-0

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF MINNESOTA

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In Re:

Case No. 04-43967

Robert James Vogelpohl and Patricia Ann Vogelpohl  
Debtor(s)

Chapter 7 Case

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**ORDER FOR RELIEF FROM THE STAY**

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Ford Motor Credit Company's Motion for an order granting relief from the stay came before the Court on October 14, 2004 at 2:00 PM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit Ford Motor Credit Company to repossess and sell the 2002 FORD FOCUS 4D SE vehicle, VIN 1FAFP34352W106641, in accordance with applicable state law.
2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: \_\_\_\_\_

\_\_\_\_\_  
United States Bankruptcy Judge